## KWONG KUM SUN CHAN GLASS MERCHANT v. AHONG CONSTRUCTION CO. (MALAYA) LTD.

[O.C.J. (Pawan Ahmad J.) August 7, 1967]

[K.L. — Civil Suit No. 1646 of 1966]

*Practice and Procedure — Service of writ at premises being the registered address of the defendant company — Company having removed to a new address earlier — Whether service was good service — R.S.C., 1957, O. 9 r. 8(1)(a).*

*Companies — Registered office — Removal to new address — Service at registered office — Companies Act, 1965, s. 120(1).*

In an application by the defendant company to set aside the judgment against it in default of appearance, the question arose for determination whether the service of the writ upon the defendant was good service.

A copy of the writ pertaining to this action was served on the defendant by leaving a copy of the writ at the registered office of the defendant in accordance with R.S.C., 1957, O. 9 r. 8(1)(a). Actually previous to the date of such service the defendant had completely vacated and removed to another address and carried on its business at its new address. A notice of the change of address was posted on the main door of the old office notifying the defendant's new address.

Under section 120(1) of the Companies Act, the defendant was required to notify the Registrar of Companies of the change of address within a period of one month but the service of the writ in this case took place within this period of one month.

**Held:** as the service effected in this case did not give any notice at all to the defendant the purported service was, therefore, not a good service and the judgment in default of appearance and all subsequent proceedings against the defending must be set aside with liberty on the part of the plaintiffs to reserve the writ on the defendants.

*Cases referred to:—*

(1) *William Heinemann Ltd. & Donald Moore Ltd.* v. *G. N. Christie* [1960] M.L.J. 99.

(2) *P. T. Pelajaran Nasional Indonesia* v. *Joo Seang & Co. Ltd.* [1958] M.L.J. 113.

(3) *T. O. Supplies (London) Ltd.* v. *Jerry Creighton Ltd.* [1952] 1 K.B. 42.

CIVIL SUIT.

*Miss S. C. Tang* for the plaintiffs.

*Kok Shoo Yin* for the defendants.

*Cur. Adv. Vult.*

**Pawan Ahmad J.:** This is an application by the defendant to set aside the judgment in default of appearance and all subsequent proceedings entered against the defendant.

One Siew Ying Kong, a clerk in the employment of Messrs. Skrine & Company, the solicitors for the plaintiffs, affirmed by affidavit dated the 10th day of January 1967 that he served a copy of the writ pertaining to this suit on the defendant by leaving a copy of the writ at the registered office of the defendant, at the Lee Rubber Building, 3rd Floor, Jalan Bandar, Kuala Lumpur, on the 7th day of January 1967 at 10.55 a.m. This was done in accordance with Order 9 rule 8(1)(a) of the Rules of the Supreme Court.

The managing director of the defendant by two separate affidavits dated 28th February 1967 and 21st June 1967 affirmed that the defendant vacated from the said registered office completely on the 2nd day of January 1967 and moved to a new office at No. 8, Road 213, Petaling Jaya, Selangor. He also stated that the defendant had posted up a notice of the change of address on the main door of the old office at the Lee Rubber Building, 3rd Floor, Jalan Bandar, Kuala Lumpur and as from the 2nd day of January 1967 the defendant carried on its business at its new office at No. 8, Road 213, Petaling Jaya, Selangor.

Counsel for the defendant urged upon the court that the service of the writ on the defendant was bad and in support of this argument he referred to the following two cases, namely: *William Heinemann Ltd. & Donald Moore Ltd.* v. *G. N. Christie,*(1) and *P. T. Pelajaran Nasional Indonesia* v. *Joo Seang & Co. Ltd.*(2)

Counsel for the plaintiffs on the other hand argued that it was a good service because it was done in accordance with the provisions of Order 9 rule 8(1)(a) of the Rules of the Supreme Court and in support thereof quoted the case of: *T. O. Supplies (London) Ltd.* v. *Jerry Creighton Ltd.*(3)

In the present case there is no dispute that on the 7th day of January 1967 the defendant had physically moved to its new address in Petaling Jaya and had completely vacated from its registered office at the Lee Rubber Building, 3rd Floor, Jalan Bandar, Kuala Lumpur and had posted up a notice at the main door of the said old premises regarding the change of address. There is also no dispute that the defendant had not notified the Registrar of Companies of the change of address on the material date.

The defendant, under section 120(1) of the Companies Act, 1965, is required to notify the Registrar of Companies of the change of address within a period of one month or else suffer a penalty under section 120(2) of the said Act. The service of the writ in this case took place within this period of one month.

The issue before this court therefore is whether or not the service of the writ has been carried out effectively.

Under heading "Service — generally — its object" at page 102 of the *Annual Practice* 1963, volume I, it says as follows:—

> "The object of all service was, of course, only to give notice to the party on whom it was made, so that he might be aware of, and able to resist, that which was sought against him, and where that had been done, so that the court might feel perfectly confident that service had reached him, everything had been done that could be required."

In this case it is obvious that the defendant was operating on the material date, i.e. 7th January 1967, at its new office, No. 8, Road 213, Petaling Jaya, Selangor and not at the registered office at the Lee Rubber Building, 3rd Floor, Jalan Bandar, Kuala Lumpur; and therefore when the writ was served on the defendant at its registered office in Lee Rubber Building, 3rd Floor, Jalan Bandar, Kuala Lumpur in accordance with Order 9 rule 8(1)(a) of the Rules of the Supreme Court, it had no knowledge whatsoever of the service of the writ.

The defendant came to be aware of the service of the writ and the judgment in default of appearance only when the applicant was notified by the garnishee that the judgment in default of appearance had been obtained against the defendant and garnishment proceedings had been issued and served on the garnishee.

In these circumstances I hold that the service of the writ on the defendant at its registered office on 7th January 1967 was not good service because in effect it did not give any notice at all to the defendant, contrary to the object of service of a writ as stated in the *Annual Practice* 1963, volume I — quoted above

I therefore allow the application to set aside the judgment in default of appearance and all subsequent proceedings against the defendant, with liberty on the part of the plaintiffs to reserve the writ on the defendant. Costs of this application are to be in the cause.

*Application allowed.*

Solicitors: *Skrine & Co.; Chung & Huang.*

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## SUBRAMANIA PILLAY v. SUNDARAMMAL; PR. KARUPPIAH — 3rd PARTY (No. 2)

**[O.C.J. (MacIntyre J.) August 8, 1967]**
**[Ipoh — Civil Suit No. 38 of 1965]**

*Principal and Agent — Power of attorney — Agent purported to borrow under power given by principal — Whether excess of authority — Whether "upon any security real or personal" includes personal guarantee of donor.*

The plaintiff claimed a sum of $11,300 and interest at an agreed rate lent to the duly constituted attorney of the defendant, which loan was contracted by the attorney when the defendant was not in the country. The defendant denied that the borrowing was with her knowledge or consent or that she received any part of it. She averred that the attorney acted in excess of the power given to him under a particular clause of the authority. The question turned on the meaning of the material words 'upon any security real or personal' — whether these words give the power to borrow on the personal gurantee of the donor.

**Held:** the general intention of the donor was to limit power to borrowing on the security of land or goods — "personal" should be interpreted to fit in with this intention. The power to borrow conferred by the relevant clause should be read to mean to borrow on security of real or personal property. Therefore, the attorney exceeded his authority in so borrowing and the claim must be dismissed.

*Cases referred to:—*

(1) *Bryant, Powis & Bryant Ltd.* v. *La Banque Du Peuple* [1893] A.C. 170, 177.

(2) *Singer* v. *Williams* [1921] 1 A.C. 41, 49.

(3) *Grimwade* v. *Mutual Society* (1885), 52 L.T.R. 409, 415.

CIVIL SUIT.

*F. C. Arulanandom* for the plaintiff.

*P. P. Dharmananda* for the defendant.

*Cur. Adv. Vult.*

**MacIntyre J.:** The plaintiff in this action claims a sum of $11,300 lent on the 30th day of January 1964 to one PR. Karuppiah as the duly constituted attorney of the defendant and interest thereon at the agreed rate up to date of judgment and thereafter at 6% per annum until satisfaction of the decretal amount.

It is admitted that the loan was contracted a week after the defendant had left on a visit to India and that she returned to this country on the 24th of August 1964. It is not disputed that at the material time the said Karuppiah was the duly constituted attorney of the defendant under a power of attorney bearing Ipoh Supreme Court Registration No. 611 of 1952.

The defendant however denies that the money was borrowed with her consent or knowledge or of receiving any part thereof and avers that even if her attorney did borrow the money she would not be liable as he had acted in excess of the power to borrow vested in him by virtue of the said power of attorney.

At the hearing both parties to the action agreed that there was only one issue to be resolved, namely, whether Karuppiah had acted in excess of the power to borrow vested in him by clause 12 of the power of attorney. Clause 12 reads as follows:—

"12. To charge any of my said lands and to borrow upon any security real or personal or by means of advances to be obtained on goods and merchandise and for that purpose to sign all necessary charges and other documents."

Mr. Dharmananda for the defendant contends that clause 12 empowers the attorney to borrow upon the security of the donor's property and had acted in excess of his power in contracting an unsecured loan. No authority bearing directly upon this point was cited but the case of *Bryant, Powis & Bryant Limited* v. *La Banque Du Peuple* (1) was cited as authority for the proposition that powers of attorney are to be construed strictly. In that appeal, Lord MacNaghten said:—

"That where an act purporting to be done under a power of attorney is challenged as being in excess of the